

Limited Liability Companies

What is an LLC?

The Beverly-Killea Limited Liability Company Act of 1994 (Stats.1994, Ch.1200) authorized the formation of LLCs in California and recognized out-of-state LLCs doing business in California. LLCs combine traditional corporate and partnership characteristics.

- LLCs classified as partnerships or disregarded entities generally determine their California income, deductions, and credits under Personal Income Tax Law.
- LLCs classified as corporations generally determine their California income under Corporation Tax Law.

Subsequent legislation permits an LLC with a single member to be disregarded for most tax purposes. A disregarded LLC must pay the LLC annual tax of \$800 and the LLC annual fee.

Annual Tax, Fee and Filing Requirements

1. Annual Tax

LLCs classified as partnerships or disregarded entities are subject to an \$800 annual tax if they are doing business in California, or the California Secretary of State accepts their articles of organization or certificate of registration. The annual tax is pre-paid for the privilege of doing business in California and is due on the 15th day of the fourth month after the beginning of the taxable year. LLCs must file form FTB 3522, LLC Tax Voucher, to pay the annual tax.

Due date for first year annual tax:

- A domestic LLC has until the 15th day of the fourth month after filing its articles of organization with the Secretary of State to pay the first year annual tax.
- If an existing foreign LLC registers or begins doing business in California after the 15th day of the fourth month of its taxable year, the first year annual tax is due immediately upon commencing business in California or registering with the Secretary of State.

Mail the LLC annual tax payment with FTB 3522 to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0631

See Forms to download form FTB 3522.

2. Annual Fee

LLCs are also subject to an annual fee based on their total income. Total income is defined as the sum of worldwide gross income plus cost of goods sold (R&TC Section 24271). The LLC fee is due on the original due date of the return, which is the 15th day of the fourth month following the close of its taxable year. Use Form 568 Limited Liability Company Return of Income, to report income and the fee.

3. Nonresident Members

If an LLC has nonresident members, it must file form FTB 3832, Limited Liability Company Nonresident Members Consent with Form 568. If the LLC fails to obtain form FTB 3832 on behalf of any nonresident member by the original due date of the tax return, then the LLC is responsible for payments of tax on each of its nonconsenting nonresident members distributive share of income. This income is taxed at the members highest marginal tax rate and is due with Form 568. Use Schedule T, Nonconsenting Nonresident Members Tax Liability (found on Form 568, Side 2) to calculate and report this tax liability.

Completing Form FTB 3832 or Schedule T does not satisfy the members California filing requirement. All members must file a California tax return.

4. Filing requirement

Form 568 (Limited Liability Company Return of Income)

An LLC subject to the LLC annual tax and fee must file Form 568 and pay the fee plus any nonconsenting nonresident member tax by the 15th day of the fourth month following the close of its taxable year. Mail Form 568 to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0601

5. California Schedule K-1 (568), Member's Shares of Income, Deductions, Credits, Etc.

An LLC that has elected to be treated as a partnership for tax purposes uses Schedule K-1 (568) to report individual members share of the LLCs income, deductions, credits, etc. We accept California Schedules K-1 (Form 568) in a paperless format via CD, diskette, or cartridge. Sending paperless Schedules K-1 reduces your paper, printing, storage, and mailing costs. Get more information about the Paperless Schedules K-1 Program from our website.

6. Extension of time to file

We grant an automatic 6-month extension of time to file a return. The automatic extension will apply if the tax return is filed by the 15th day of the tenth month following the close of the taxable year. An extension of time to file is not an extension of time to pay. You must pay the full balance by the original due date of the return, the 15th day of the fourth month following the close of the taxable year, to avoid penalties and interest.

Note: The LLC must file form FTB 3537, Payment Voucher for Automatic Extension for Limited Liability Companies, if it owes taxes and fees and cannot file its California return by the due date. Mail form FTB 3537 with payment to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0651

7. Doing business in California

Doing business is defined as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. (R&TC section 23101.) Regardless of where the trade or business of the LLC is primarily conducted, an LLC is considered to be doing business in California if any of its members, managers, or other agents conducts business in California on behalf of the LLC.

Examples:

Paul is a California resident and a member of a Nevada LLC. The LLC owns property in Nevada. The LLC hires a Nevada management company to collect rents and provide maintenance. Paul has the right to hire and fire the management company. Paul occasionally has telephone discussions with the management company regarding the property. Paul is ultimately responsible for the property, oversees the management company, and, therefore, is conducting business in California on behalf of the LLC. The Nevada LLC is considered doing business in California and must file Form 568.

Rachel is a California resident and a member of an Oregon LLC. The LLC has retail store in Oregon. Rachel uses a California address for the LLC tax filings and a California accountant to prepare the LLC tax returns. Rachel, therefore, is conducting business in California on behalf of the LLC. The Oregon LLC is considered doing business in California and must file Form 568.

Sara is a California resident and a member of a Texas LLC. The Texas LLC receives royalties from Texas oil wells. Sara maintains a California business bank account and secures financing in California for the LLC's Texas investments. Sara is conducting business in California on behalf of the LLC. The Texas LLC must file Form 568. John is a member of an Arizona LLC. The Arizona LLC operates a repair shop in Arizona.

John moved to California and no longer works as a mechanic for the LLC. John is still responsible for some of the general and financial administration of the business including bill payment and bookkeeping. John is, therefore, conducting business in California on behalf of the LLC. The Arizona LLC is considered doing business in California and must file Form 568.

Nonregistered foreign LLCs that are members of an LLC doing business in California or general partners in a limited partnership doing business in California are considered doing business in California and should file Form 568.

Example:

LLC X holds rental real estate properties within California and is considered to be doing business here. One of its members, LLC Y, is not registered in California and has no activities in this state other than holding a membership in LLC X. Because LLC Y is a member of LLC X it is also considered to be doing business in California and must file Form 568.

Billings and notices

We will bill LLCs classified as partnerships or disregarded entities for unpaid taxes or the fee.

Mailings:

Depending upon the filing situation for each LLC, we mail one of the following:

- Return Information Notice for failing to show the correct LLC annual tax, LLC fee, or nonconsenting nonresident members' taxes and applicable interest.
- Notice of Balance Due for failing to pay the LLC annual tax, LLC fee, or nonconsenting nonresident members' taxes plus applicable penalties and interest.
- Past Due Notice for tax liabilities, penalties, and interest unpaid 45 days from the first notices' mail date.

LLCs may be subject to interest and penalties if: (1) the tax or fee is late or not paid; or, (2) the tax return is filed beyond the extended due date.

We impose penalties under the following R&TC sections:

- Underpayment and monthly, R&TC Section 19132
- Delinquent, Section 19131
- Late filing, Section 19172

No additional penalties or interest will accrue if we receive payment in full within 15 days of the notice date.

LLC Cancellation

Q. How do I cancel my LLC's registration?

A. Beginning September 29, 2006, an LLC is no longer required to obtain a tax clearance certificate from the Franchise Tax Board to cancel its registration with the Secretary of State.

In addition, LLCs may be able to avoid the minimum franchise or annual tax for current and subsequent taxable years if all of the following requirements are met:

- File a timely final tax return, including extension, for the preceding taxable year.
- Conduct no business after the last day of the preceding taxable year.
- File the appropriate documents with the California Secretary of State within 12 months of the filing date of your final tax return. Please see Publication 1038, Guide to Dissolve, Surrender, or Cancel a California Business Entity, for more information.

What to file

Domestic LLCs - File a Certificate of Dissolution (SOS-Form LLC-3).

Foreign and domestic LLCs - File a Certificate of Cancellation (SOS Form LLC-4/7)

Submit

Mail DOCUMENT FILING SUPPORT UNIT
SECRETARY OF STATE
PO BOX 944228
SACRAMENTO CA 94244-2280

-or-

Deliver SECRETARY OF STATE
1500 11TH STREET, THIRD FLOOR
SACRAMENTO CA 95814

Contact Website: www.sos.ca.gov
Telephone: (916) 653-3795

**Short Form
Cancellation**

Beginning January 1, 2005, domestic LLCs organized in California on or after January 1, 2004, do not need to obtain a tax clearance certificate if they meet all of the following:

- The certificate of cancellation is filed within 12 months of the filing of the articles of organization.
- The LLC has no debts or liabilities, except those described as tax liabilities.
- A final franchise tax return, or a final annual tax return, has been or will be filed with the Franchise Tax Board.
- The known assets of the LLC remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled to them, or the LLC acquired no known assets.
- A majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the articles of organization, voted to dissolve the limited liability company.
- The LLC has not conducted any business since organizing.
- All assets of the LLC have been distributed to the entitled persons.
- The cancellation is authorized by a majority of the managers or members, or the person or majority of persons that signed the articles of organization.
- All payments the LLC has received for member interests have been returned to the investors.

A domestic LLC meeting these conditions must file Secretary of State Form LLC-4/8, Limited Liability Company Short Form Certificate of Cancellation.

Forms and addresses

Forms

LLCs classified as:

- Partnerships or disregarded entities, file form FTB 3522, Limited Liability Company Tax Voucher and Form 568, Limited Liability Company Return of Income.
- Corporations, file Form 100-ES, Corporation Estimated Tax, and Form 100, California Corporation Franchise or Income Tax Return or Form 100S, California S Corporation Franchise or Income Tax Return.

Use form FTB 3537, Payment Voucher for Automatic Extension for Limited Liability Companies Forms for a complete list of forms and publications.

If you have :

- Nonresident members - File a signed form FTB 3832, Limited Liability Company Nonresident Members' Consent with Form 568 for each nonresident member. Form FTB 3832 is due by the tax return due date.
- Nonconsenting nonresident members - Use Schedule T, Nonconsenting Nonresident Members' Tax Liability, (Form 568, Side 2) to calculate and report nonconsenting nonresident members' taxes to be paid by the LLC.

Mailing addresses

- **Annual tax payment** - Mail payment with form FTB 3522, Limited Liability Company Tax Voucher to:
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0631
- **Tax or fee** - Mail payment with form FTB 3537, Payment Voucher for Automatic Extension for Limited Liability Companies to:
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0651

Frequently Asked Questions

Q. How do I organize or register an LLC?

A. For information about organizing or registering an LLC in California, visit the Secretary of State Website: www.sos.ca.gov or contact:

LIMITED LIABILITY COMPANIES
SECRETARY OF STATE
PO BOX 944228
SACRAMENTO CA 94244-2280
Telephone: (916) 653-3795

Q. I never did any business or even opened a door, bank account or anything. Why do I owe the \$800 annual tax?

A. LLCs are subject to an annual tax of \$800 if they are doing business in California, or the California Secretary of State accepts their articles of organization or a certificate of registration. The annual tax is paid for the privilege of doing business in California, even if the LLC did no business in California. An LLC is not subject to the tax if it did no business in California and the taxable year was 15 days or less.

Also, for tax years beginning on or after January 1, 2005, a domestic LLC is not subject to tax if it meets all of the following conditions:

- It files a first year return that is also its final return.
- It never did business.
- It files a short form cancellation with the Secretary of State.

Important: Even if these requirements are met, a payment of the annual tax cannot be refunded.

Q. I stopped doing business in California; what do I need to do to stop the requirement to pay the annual tax?

A. Beginning on or after January 1, 2006, the annual tax is not due if the following conditions are met:

- The entity files a final tax return for the previous tax year.
- The entity did not do business in California after that year.
- The entity files for cancellation with the Secretary of State within 12 months of the due date of that final return, including extension.

Q. How are the fees calculated?

A. The LLC annual fee is based on total income reportable to California. Under R&TC Section 24271, total income is defined as the sum of worldwide gross income plus cost of goods sold.

If the total income is:		The fee amount is:				
Equal to or More Than	And Less Than	For 1994 & 1995	For 1996 - 1998	For 1999	For 2000	For 2001 & after
\$250,000	\$500,000	\$500	\$500	\$865	\$1,042	\$900
\$500,000	\$1,000,000	\$1,000	\$1,500	\$2,595	\$3,126	\$2,500
\$1,000,000	\$5,000,000	\$2,000	\$3,000	\$5,190	\$6,251	\$6,000
\$5,000,000 or more		\$4,000	\$4,500	\$7,785	\$9,377	\$11,790

Note: For tax years beginning on or after January 1, 2001, the definition of total income excludes amounts already included in the calculation of an LLC fee.

Example: LLC X does business in California during 2001, and LLC Y has a 50% member interest in X. LLC X has \$1,200,000 of total income during 2001. LLC Y has \$900,000 of total income during 2001, which includes \$600,000 from LLC X (\$1.2 million X 50% member interest).

The filing requirements are as follows:

Entity	2001 Form	Annual Tax	Total Income	LLC Fee
X, LLC	568	\$800	\$1,200,000	\$6,000
Y, LLC	568	\$800	\$300,000 (\$900,000-\$600,000)*	\$900

*For tax year 2001, Y excludes \$600,000 of total income because it was already used to calculate the fee of X.

Q. How do I complete the LLC Income Worksheet?

A. LLCs with an ownership interest in a pass-through entity must report their distributive share of the pass-through entity's total income (that has not already been included in the calculation of an LLC fee). Their distributive share cannot include any deductions that are subtracted from gross ordinary income to obtain net ordinary income. Also, the matching cost of goods sold must be entered on line 18d. Contact the pass-through entity to get the necessary information for lines 3, 9c, 10c, 13b, 14b, 15b, 16b, 17b, and 18d.

LLCs that are disregarded entities also compute total income on the LLC Income Worksheet. Use the applicable lines and ignore the line items that address Schedule B.

LLCs that own a disregarded entity must report the disregarded entity items on Schedule B and Schedule K. Do not separately enter any amounts from a membership owned in a disregarded entity on the LLC Income Worksheet.

Q. What is a protective claim?

A. To protect the statute of limitations on a claim, the taxpayer may file a request with the Franchise Tax Board to withhold any action on the claim while an audit determination or litigation is still pending. The taxpayer may file a protective claim pending the outcome of:

- An appeal to the State Board of Equalization.
- A court case.
- An audit by the Internal Revenue Service.
- An audit by another state taxing agency.
- Other litigation.

Q. What are the procedures for filing an LLC fee protective claim?

A. If you wish to file a protective claim based on recent court cases, including Northwest Energetic Services, challenging the constitutionality of LLC fees, the representative or LLC should fax a letter to the Franchise Tax Board with the following information:

- LLC name and identification number issued by the Secretary of State. Unregistered LLCs use the identification number issued by the Franchise Tax Board.
- A statement indicating that this is a protective claim.
- The tax years involved.
- The amount of the claim, which should match the amount of the annual fee that the LLC paid.
- A description of the issue stating that the LLC fee is unconstitutional is enough.
- Name of person to contact, phone number, and fax number.
- Signature of the representative with power of attorney or by the LLC's managing member.

Fax the letter to (916) 845-9796

Or

Mail the letter to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-8888

We will send a fax confirmation receipt. We cannot confirm by email because the letter will contain confidential information that we cannot send over the internet.

Q. I'm a corporation that converted to an LLC during the current year. Am I liable for the tax as a corporation and as an LLC in the same year?

A. Yes. Each entity is responsible for its own taxes. An LLC is not subject to the tax if it did no business in California and the taxable year was 15 days or less.

Q. If I'm classified as a partnership for federal purposes and file federal Form 1065 U.S. Partnership Return of Income, why am I required to file Form 568 Limited Liability Company Return of Income, instead of Form 565 Partnership Return of Income, for state purposes? And, do I still have to pay the fees?

A. Although California law uses the same entity classification as federal, an LLC classified as a partnership must file Form 568, Limited Liability Company Return of Income, and pay an annual tax of \$800 and an annual fee based on total income if it meets the following conditions:

- Organized in California
- Registered with the Secretary of State to transact business in California
- Doing business in California (California Revenue and Taxation Code Section 23101)

An LLC with California source income that does not meet any of the requirements listed above is required to file Form 565 Partnership Return of Income.

Q. If I have nonresident members, and cannot get all their signatures on the consent release form, can I still file the return?

A. Yes. If a nonresident member of an LLC refuses to sign form FTB 3832, Limited Liability Company Nonresident Members' Consent, the LLC must compute and pay the members tax liability. See the instructions for Schedule T, Nonconsenting Nonresident Members' Tax Liability (Form 568, Side 2).

Q. What is a Series LLC and how does it file in California?

A. A Series LLC is a single LLC that has separate allocations of assets each within its own series. The laws under which Series LLCs are formed provide for special liability protections and member allocations for each series within the LLC.

For purposes of filing in California, each series within a Series LLC must file a separate Form 568, Limited Liability Company Return of Income, and pay its separate LLC annual tax and fee if it is registered or doing business in California, and both of the following apply:

- The holders of interest in each series are limited to the assets of that series upon redemption, liquidation, or termination, and may share in the income only of that series.
- Under state law, the payment of the expenses, charges, and liabilities of each series is limited to assets of that series.